IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 156 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MRUDULABEN INDUKUMAR BHATT - Appellant(s)
Versus
NUTANKUMAR MANDIR 3RD SPECIAL LAND ACQUISITION & 5 - Defendant(s)

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Appearance :

MR SHAKEEL A QURESHI for Appellant(s) : 1,
MR DM THAKKAR for Defendant(s) : 1,
MR HV THAKOR for Defendant(s) : 1,
RULE SERVED for Defendant(s) : 2 - 6.

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 01/03/2006

ORAL JUDGMENT

Mrudulaben Indukumar Bhatt, appellant,

original plaintiff has filed this Second Appeal under Section 100 of the Civil Procedure Code, challenging the judgement and decree dated 19.3.1980 passed by the Joint District Judge, Rajkot, in Civil Appeal No. 51/1978. By the impugned judgement, the learned Judge was pleased to confirm the judgement and decree dated 30.11.1977 passed by the learned Civil Judge (S.D.), Rajkot, in Regular Civil Suit No. 19 of 1975 filed by the appellant original plaintiff.

2. The facts giving rise to this appeal are as under:

3. Mrudulaben Indukumar Bhatt, plaintiff has filed a suit against defendant No. 1 i.e. Educational Institution running in the name of Nutunkumar Mandir, a primary school and defendant Nos. 2 is the owner and controller of defendant No. 1 and he manages the affairs of the institution. Defendant No. 1 is duly registered

and defendant Nos. 2 to 6 are trustees of the school. The plaintiff has filed the suit to recover the difference of pay.

4. It is the case of the plaintiff in the plaint that the plaintiff was serving as Assistant Teacher from 1.6.1969 in the educational institution of defendant No. 1 and as per the Rules, defendant No. 1 is obliged to pay Rs. 193/- as emoluments per month to the plaintiff. Instead of paying Rs. 193/-, defendant No. 1 used to pay only Rs. 75/- to the plaintiff.

5. It was the case of the plaintiff that when the plaintiff raised objection that she is entitled to Rs. 193/- and the school is paying Rs. 75/- per month and obtaining signature in the salary sheet for the full amount of salary, the defendants threatened her with removing her from service. Ultimately, when the plaintiff demanded Rs. 193/-, the defendants removed her from

service on 1.8.1973. When the plaintiff made representation through Union, the plaintiff was again taken in service and considering her previous service, she was made permanent from 6.8.1973, though she was paid only Rs. 75/ at that time. Hence the plaintiff has claimed difference of pay at the rate of Rs. 118/- per month from 1.6.1969 and has limited her claim to Rs. 4,248/- for the period 1.8.1972 to 31.7.1974.

6. In the suit defendant No. 1 and 2 filed written statement at Exh. 8 wherein they have stated that defendant No. 1 institution is duly registered as per the Bombay Public Trust Act. They have denied the contentions of the plaintiff in the written statement. As regards true facts, they have stated that the plaintiff was serving. It was their case that defendant No. 1 Institute came into existence in 1970 and the plaintiff was appointed as peon and she served there as peon

upto 31.5.1972 and she was paid salary of peon after showing it in the bill and in that bill the signature of the plaintiff was taken.

7. From 1.6.1972 the plaintiff was appointed as teacher in the Bal Mandir and her pay was fixed at Rs. 100/- per month plus dearness allowances and Rs. 10/- as house rent allowance and the plaintiff was paid whatever she was entitled to get legally.

8. In view of the aforesaid findings, the learned trial Judge has framed six issues. As far as this Court is concerned, in the present appeal issue No. 2 was that the plaintiff proved that she was entitled to receive salary of Rs. 193/- p.m. That was answered in the negative.

9. As regards defendant's contention that defendant proved that the plaintiff was entitled to receive salary of Rs. 143/- per month. That

issue was answered in favour of the defendants and as regards the difference of salary the trial Court negatived the contention of the plaintiff.

10. It may be noted that on behalf of the plaintiff, the plaintiff examined herself at Exh. 37 where she has reiterated that she was entitled to Rs. 193/-. The plaintiff also produced a letter dated 6.8.1973 in which the Principal of the School has stated that the plaintiff was serving in the school from 1.6.1969 and she was confirmed on 1.7.1973. The plaintiff has produced some note book to show that she was working as a teacher in the school. In fact, the plaintiff has also produced a letter dated 31.7.1973 which was written by the Principal that the plaintiff has worked in the school from 1.1.1969 to 1.7.1973 and the work of the plaintiff was satisfactory and she has done with full competence. The plaintiff has also examined one Shyamjibhai Mavjibhai at Exh. 50 who was working in Education

Department at the relevant time. The plaintiff has also examined one Dhirajlal Lavjibhai at Exh. 51 who was serving and nothing turned out from his deposition. As regards the defendants, the defendants examined one Jitendra Hariprasad one of the trustees of the school who has deposed that the trust came into force on 9.11.1970 and the plaintiff was given service as peon and her salary was Rs. 90/-, dearness allowance Rs. 46 and house rent Rs. 10/- in all Rs. 146/-. Another deposition is Jayshukhlal Shantilal at exh. 119 who was also serving in Education Department. According to him the plaintiff did not pass the requisite examination and therefore she was not entitled to work as a teacher. He has also produced the result of the plaintiff regarding Sanad examination. The defendants also examined one Balvantray Keshavlal at Exh. 121. Even the Education Officer has also rejected the application of the plaintiff regarding pay.

11. In view of this oral and documentary evidence, the learned trial Judge has by his judgement and decree dated 30.11.1977 held that the plaintiff failed to prove that she is entitled to receive salary of Rs. 193/- per month. As regards issue No. 3, the learned trial Judge has held that the defendants have proved that the plaintiff is entitled to receive salary of Rs. 143/- per month. As regards issue No. 4, the learned trial Judge has stated that the plaintiff is not entitled to difference of salary i.e. Rs. 193/- – Rs. 75/- = Rs. 118/- as claimed by the plaintiff for three years. That is how the suit was dismissed.

12. Being aggrieved and dissatisfied with the said judgement and decree, the plaintiff filed Regular Civil Appeal No. 51 of 1978 before the District Court, Rajkot. The matter was heard by the learned District Judge and after considering all the facts and evidence on record, the learned

District Judge was pleased to dismiss the appeal by his order dated 19.3.1980.

13. It appears that being aggrieved and dissatisfied with the aforesaid judgement and decree passed by the learned District Judge, Rajkot, the plaintiff has filed Second Appeal No. 156 of 1983 before this Court. At that time, the following substantial questions of law were framed by this Court on 15.6.1983:

> (1) Whether in the facts and circumstances of the case, the appellant ought to have been treated as a Primary teacher, right from the inception of the school?
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> (2) Whether in the facts and circumstances of the case, the appellant has shown to have been less paid upto 1973 and even thereafter, when she was

reinstated as a teacher?

14. Thereafter, the matter has reached before this Court several times. However, the matter could not be heard finally and that is how the matter has reached today before this Court.

15. I have heard Mr. A.A. Qureshi, learned advocate for the appellant. He has stated that it is no doubt true that both the Courts below have given concurrent findings against the plaintiff after relying upon the evidence on record and therefore the scope of the appeal is very limited. However, the learned advocate has stated that this very plaintiff had originally filed Second Appeal No. 38 of 1982 before this Court which arose out of the same facts and very same school trust. By letter dated 14.12.1976 the plaintiff was removed from the service from that very school and the said dismissal order was challenged by the plaintiff by filing Regular

Civil Suit No. 1145 of 1976 and the said suit was dismissed by the learned trial Judge on 29.11.1979. Being aggrieved and satisfied with the said order, the plaintiff filed appeal being Civil Appeal No. 5/80 before the District Court, Rajkot and in the said matter the learned Assistant Judge, Rajkot, by his judgement and decree dated 16.11.1981 was pleased to dismiss the appeal. Being aggrieved and dissatisfied with the same, the plaintiff filed Second Appeal before this Court. That very Second Appeal was heard by this Court (Coram: V.H. Bhairavia, J) who was pleased to pass judgement on 23.11.1990. In the said matter, all the facts which I have set out here, were considered and in the operative portion of the judgement, the learned Judge has observed thus:

> “I have perused appointment order (Exh. 41) and order making plaintiff permanent (Exh. 43). The simple question to be

decided in this appeal is whether in view of the orders at Exh. 41 & 43, the plaintiff, at the relevant time, was serving as Primary Teacher or was serving as a teacher in Bal Mandir. Exhs. 41 & 43 are not disputed by the respondents. Order exh. 43 clearly states that she has been working since 1.6.1969 in primary Section and has been made permanent by the order 6.8.1973 (Exh. 43).Thus, the order Exh. 43 clearly reveals that the plaintiff was a teacher serving in the primary section and, therefore, she was primary teacher. In my view, the Courts below have committed an error in appreciating these documents (Exh. 41 & 43) which clearly support the plaintiff's case. It seems that the Courts below were much impressed by the admission of the plaintiff made in her cross-examination that she was in Bal Mandir at the time of

appointment but have failed to consider her first version that in the event of absence of any teacher in Bal Mandir, she was used to take class in Bal Mandir and it is quite possible that on the date of her termination, she might have taken classes in Bal Mandir. This Court cannot shut eyes towards the clear documentary evidence Exh. 43 which supports the claim of the plaintiff that she was permanent primary teacher. In my view, both the Courts below have committed blunder in holding otherwise and, therefore, the judgement and order passed by the learned Civil Judge (S.D.) Rajkot and confirmed by learned Assistant Judge, Rajkot, requires to be quashed and set aside and the present appeal requires to be allowed."

16. In view of the observation, my brother

Justice Bhairavia was pleased to allow the Second Appeal and set aside both the judgements of the trial Court as well as the appellate Court.

17. The learned advocate for the appellant, therefore, submitted that in view of the judgement of this Court between the same parties and on the same facts, the Second Appeal is also required to be allowed.

18. Mr. D.M. Thakkar, learned advocate for the respondents, has strongly contended that in this case both the Courts below have given concurrent findings of facts and therefore this Court may not exercise its power under Section 100 of the Code of Civil Procedure which provides only question of law has to be considered and there is no question of law arises and this Court may not interfere with the present Second Appeal.

19. I have considered the facts and circumstances of the case. It is no doubt true

that the arguments raised by Mr. D.M. Thakkar appear to be attractive but if one considers the facts of the case, particularly, the earlier judgement of this Court where identical facts and letters which I have referred to above were before this Court and this Court has considered the matter in its entire perspective and allowed the appeal and held that in this context, termination order was set aside and directed the respondents to reinstate the appellant plaintiff on her original post within the period of fortnight from the date of receipt of the writ of the order with all consequential benefits like continuity of service and payment of back wages etc., The respondents are directed to back wages within four weeks from the date of reinstatement of the plaintiff in service. The appeal is allowed accordingly with costs.

20. It may be noted that in spite of the aforesaid order, the plaintiff was not paid the

arrears of salary. The learned advocate states that contempt proceedings are initiated before this Court. In the said contempt matter this Court (Coram: R.A. Mehta and A.N. Divecha, JJ) was pleased to pass order on 3.2.1991.

21. In view of the same, it appears that the plaintiff has got Rs. 10,000. In the contempt matter, she contended that she is entitled to more than Rs. 10,000/- and this Court (Coram: A.P. Ravani and K.R. Vyas, JJ) was pleased to pass the following order:

> “There is no dispute with regard to the fact that the respondents have made payment of the amount of back wages which according to them was payable to the petitioner. The learned counsel for the petitioner states that the petitioner is entitled to claim further amount in view of the direction given by this Court in

Second Appeal No. 38 of 1982 decided on November 23, 1990 to the effect that the petitioner is entitled to all consequential benefits like continuity of service and payment of back wages etc. However, the respondents contends that second appeal No. 15/83 is pending in this court in which the question as regards the amount of back wages payable to the petitioner is involved. On this point there is no dispute. In view of this undisputed position as regards the uncertainty of the amount of back wages payable to the petitioner, it cannot be said that any case for contempt of court is made out. Hence rejected. Notice is discharged."

22. I have considered the facts and circumstances of the case. It is no doubt true that the learned advocate for respondents

contended that there is concurrent findings of the Courts below and in Second Appeal this Court may not interfere with the findings of both the Courts below. However, judicial comity requires that I have to follow the judgement of this Court, particularly when the judgement of this Court is based on the same set of facts. I have referred to the judgement of my brother Justice V.H. Bhairavia dated 23.11.1990. The said judgement squarely applies to the facts of the present case. Before the earlier Court the same facts and documents were there and when this Court has already given a detailed judgement allowing the appeal of the same employee concerned, I have no alternative but to allow the Second Appeal. In view of the same, the plaintiff has served upto 1991 and she has retired from service on 22.3.1991. So in view of the subsequent development, the Second Appeal is allowed. Both the judgements and decree of the trial Court as well as the appellate Court are

quashed and set aside. Respondent No. 1 is directed to pay arrears of salary to the appellant upto 23.3.1991 i.e. till she retires. It may be noted that the respondent has already deposited Rs. 10,000/- before this Court earlier. The same will have to be adjusted against the arrears of salary. Rs. 10,000/- which has been deposited by the respondent before this Court is also allowed to be withdrawn by the appellant.The Second Appeal is allowed accordingly.

23. In the result, Second Appeal is allowed with the above observations.

(K.M. MEHTA, J)